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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT SEATTLE

11 JAMES WILLIAMS,

12 Plaintiff,

Case No. C11-1214-JCC-JPD

13 v.

14 KAREN PORTINE, *et al.*,

Defendants.

REPORT AND RECOMMENDATION

15  
16 INTRODUCTION AND SUMMARY CONCLUSION

17 Plaintiff James Williams has filed a civil rights action under 42 U.S.C. § 1983 seeking  
18 injunctive relief for an alleged violation of his right to be free from cruel and unusual  
19 punishment. More specifically, plaintiff complains that he has been confined in the intensive  
20 management unit for over two years and he seeks an injunction ordering Karen Portine, the  
21 Associate Superintendant of the Special Offenders Unit at the Monroe Correctional Complex,  
22 and the Department of Corrections, to release him back into general population. Plaintiff  
23 identifies Ms. Portine and the Department of Corrections as the only defendants in this action.

REPORT AND RECOMMENDATION - 1

1 This matter is now before the Court on defendants' motion to dismiss plaintiff's  
2 complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may  
3 be granted. Plaintiff has not filed any response to the motion to dismiss. For the reasons set  
4 forth below, this Court recommends that defendants' motion to dismiss be granted and that  
5 plaintiff's complaint, and this action, be dismissed without prejudice. This Court further  
6 recommends that defendants' motion to stay discovery pending resolution of the instant motion  
7 to dismiss be stricken as moot.

### 8 DISCUSSION

9 An action may be dismissed for failure to state a claim only if it appears beyond doubt  
10 that the plaintiff can prove no set of facts in support of his claim which would entitle him to  
11 relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Keniston v. Roberts*, 717 F.2d 1295 (9th  
12 Cir. 1983). On a motion to dismiss, material allegations of the complaint are taken as admitted  
13 and the complaint is to be liberally construed in favor of the plaintiff. *Keniston*, 717 F.2d at  
14 1300. Vague and conclusory allegations of official participation in civil rights violations are not  
15 sufficient to withstand a motion to dismiss." *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir.  
16 1992)(quoting *Ivey v. Board of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)).  
17 "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts  
18 alleged under a cognizable theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th  
19 Cir. 1988).

20 The law is clear that in order to set forth a *prima facie* case under § 1983, a plaintiff must  
21 allege facts showing how each individually named defendant caused or personally participated in  
22 causing the harm alleged in the complaint. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).  
23 The causation requirement of § 1983 is satisfied only if a plaintiff demonstrates that a defendant

1 did an affirmative act, participated in another's affirmative act, or omitted to perform an act  
2 which he was legally required to do that caused the deprivation complained of. *Id.* (quoting  
3 *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978)).

4 A defendant cannot be held liable solely on the basis of supervisory responsibility or  
5 position. *Monell v. Department of Social Servs., of City of New York*, 436 U.S. 658, 691-694  
6 (1978). Rather, a plaintiff must allege that a defendant's own conduct violated the plaintiff's  
7 civil rights. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385-90 (1989).

8 Plaintiff fails to allege in his complaint any specific facts demonstrating that the two  
9 defendants named in this action caused him harm of constitutional dimension. Plaintiff asserts  
10 that he has spent a considerable amount of time in the intensive management unit over the past  
11 16 years because of abuse by prison staff, and that the Department of Corrections is currently  
12 forcing him to live in the intensive management unit. However, these assertions are simply too  
13 vague to withstand the pending motion to dismiss. Because plaintiff has not alleged specific  
14 facts demonstrating that any individual or entity caused the constitutional deprivation  
15 complained of, he has failed to adequately state a cause of action under § 1983.

#### 16 CONCLUSION

17 For the foregoing reasons, this Court recommends that defendants' motion to dismiss be  
18 granted and that plaintiff's complaint, and this action, be dismissed without prejudice. This  
19 Court further recommends that defendants' pending motion to stay discovery be stricken as  
20 moot. A proposed order accompanies this Report and Recommendation.

21 DATED this 6th day of January, 2012.

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23 JAMES P. DONOHUE  
United States Magistrate Judge